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Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term 1994

Leslie E. Knighten, Petitioner

Versus

Cave And McKay, Attorneys At Law, Et Al., Donald G. Cave, John F. McKay, Craig S. Watson, Unknown Corporation and\or Corporations and Unknown Indemnity Company, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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69 pp

QUESTIONS PRESENTED

I.

Whether attorneys are given total immunity from claims seeking redress for alleged violations of civil rights pursuant to Title 42 U.S.C.

II.

Whether imposing Rule 11 Sanctions against Petitioner, as a consequence of filing Title 42 claims against attorneys and\or law firms, was an abuse of discretion.

III.

Whether Title 42 United States Code Section 1981, excludes whites.

IV.

In a civil case, can ineffective or inadequate legal representation by an attorney and\or law firm violate the requirements of the due process clause or violate any other constitutional guarantees.

QUESTIONS PRESENTED CONTINUED

V.

Whether Petitioner's legal malpractice claim seeking redress was prescribed, pursuant to a one year prescription period under LSA-C.C. 3492 or subject to a ten year prescription period under LSA-C.C. 3499.

VI.

Whether the Petitioner's constitutional right to a fair and impartial trial was violated.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1994

Leslie E. Knighten, Petitioner

Versus

Cave And McKay, Attorneys At Law, Et Al., Donald G. Cave, John F. McKay, Craig S. Watson, Unknown Corporation and\or Corporations and Unknown Indemnity Company, Respondents

---

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Leslie E. Knighten, respectfully prays that a writ of certiorari will be issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in favor of the aforesaid Respondents and against the Petitioner entered on July 29, 1994.

OPINIONS BELOW

The unpublished written opinion of the Fifth Circuit Court of Appeals appears in Appendix B. The unpublished written opinion of the District Court of the Middle District of Louisiana appears in Appendix C.

JURISDICTION

The Court of Appeals' Judgment and Opinion was filed on July 29, 1994, and set forth in Appendix A and Appendix B. This Court's jurisdiction in invoked under Title 28 U.S.C. §1254 (1) and Title 28 U.S.C. §2101 (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I to the United States Constitution is set forth in Appendix L

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STATEMENT OF THE CASE

A. Proceedings Below

On November 20, 1991 the Petitioner filed the original Title 42 Complaint against Respondents (R.1-25);

On December 11, 1991 the Respondents filed an Answer to complaint (R.33-36);

On or about March 3, a Scheduling Order (R.54) was entered and in said Order Petitioner was given until March 27, 1992 to propound his written discovery request and to amend his complaint.

On or bout March 23, 1992 Petitioner filed a motion for additional time to amend complaint and to propound written discovery (R.55-57);

On or about March 24, 1992 an Order (R.62) was entered denying Petitioner's motion for additional time to amend complaint and to propound written discovery request;

On March 27, 1992 the Petitioner filed his timely Motion For Leave To Amend Complaint, Amended Complaint (R.64-65,67-95) and propound numerous discovery request upon the Respondents, and each of them;

On March 31, 1992 an Order (R.66) was entered granting the Petitioner's Motion For Leave To Amend Complaint and Amended Complaint;

On May 15, 1992 Respondents filed a Motion For Summary Judgment and\or Motion to Dismiss (R.347-353) and filed a Motion for Sanctions (R.123-128);

On May 26, 1992 Petitioner filed a Motion For Continuance (R.133-135) in respect to Respondents Motion For Summary Judgment and\or Motion to Dismiss (R.347-353) and a Motion for Sanctions (R.123-128);

On May 26, 1992 an Order (R.136) was entered granting the Petitioner's Motion For Continuance;

On June 15, 1992 Petitioner filed a Motion For Continuance (R.137-143) in order to propound discovery prior to the hearing of Respondents's Motion For Summary Judgment and\or Motion to Dismiss (R.347-353);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, John F. McKay, to answer first set of interrogatories (R.144-154);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, Craig S. Watson, to answer first set of interrogatories (R.158-171);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, Craig S. Watson, to answer second set of interrogatories (R.175-196);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent, Cave & McKay, to answer first set of interrogatories (R.200-210);

On June 16, 1992 Petitioner filed a Motion To Compel Respondent Cave & McKay, to answer second set of interrogatories (R.214-223);

On June 18, 1992 an Order (R.227) was entered referring Petitioner's motions to compel defendants to answer interrogatories, to a U. S. Magistrate;

On June 18, 1992 an Order (R.228) was entered denying Petitioner's Motion For Continuance (R.137-143) to propound discovery prior to hearing Respondent's Motion For Summary Judgment and\or Motion to Dismiss (R.347-353);

On June 18, 1992 Petitioner filed his Opposition To Respondent's Motion For Summary Judgment And\Or a Motion To Dismiss Plaintiff's Complaint (R.229-247);

On June 18, 1992 Petitioner filed his Opposition To Respondent's Motion For Sanctions And Petitioner's Counterclaim For

Sanctions (R.248-254);

On June 23, 1992 a Ruling (R.287-291) was entered granting Respondent's Motions For Summary Judgment and Motion for Sanctions;

On June 26, 1992 an Order (R.292) was entered granting Respondent's Motions For Summary Judgment and Motion for Sanctions;

On July 7, 1992 Petitioner filed a Motion For Reconsideration of Order Of Summary Judgment And\Or Ruling On Motions, Alternatively, A Motion For A New Trial And\Or Similar Motion (R.293-296, 297-308);

On July 7, 1992 Petitioner filed a Motion For Continuance (R.319-321) in respect to the motions to compel Respondents to answer interrogatories, pending an appeal;

On July 8, 1992 an Order (R.322) was entered granting the Petitioner's Motion For Continuance;

On July 8, 1992 Respondents filed their

second Motion For Sanctions (R.323-325);

On July 13, 1992 an Order (R.328) was entered reassigning Petitioner's Motion For Reconsideration of Order Of Summary Judgment And\Or Ruling On Motions, Alternatively, A Motion For A New Trial And\Or Similar Motion (R.293-308) from December 18, 1992 to August 21,1992;

On August 20, 1992 Petitioner filed his Opposition To Respondent's Motion For Sanctions And Plaintiff's Counterclaim For Sanctions (R.329-333);

On August 20, 1992 a Ruling (R.334-335) was entered denying Petitioner's Motion For Reconsideration of Order Of Summary Judgment And\Or Ruling On Motions, Alternatively, A Motion For A New Trial And\Or Similar Motion (R.293-308) and denying Respondent's Motion For Sanctions (R.329-333);

On September 1, 1992 an Amended Judgment (R.336) was entered in respect to the

sanctions;

On September 16, Petitioner filed an Application To Stay Execution of Judgment Pending Appeal (R.337-340);

On September 17, Petitioner filed a timely Notice Of Appeal (R.341-343) appealing from the Ruling entered on or about August 21, 1991 (R.334-335) and from Amended Judgment entered on September 1, 1992 (R.336);

On September 21, 1992 an Order (R.346) was entered granting Petitioner's Application To Stay Execution Of Judgment pending appeal effective under Rule 62(d), Upon the posting of an approved supersedeas bond in the amount of $1,500.00;

On July 29, 1994 a Judgment and Opinion was entered in favor of the Respondents by the United States Court of Appeal For The Fifth Circuit, that has brought on this matter before this Court.

B. Statement of the facts

On or about March 30, 1985 the Petitioner received a job related injury while working as an electrician in the Sears building for Todd Electric, Inc., a sub-contractor, for Rentenbach Engineering which in turn had been hired by Sears Roebuck Company to renovate it's Cortana Store in Baton Rouge, Louisiana.

On or about the 10th day of July, 1985, a Petition for Damages was filed in the Parish of East Baton Rouge, 19th Judicial District Court, docket no. 290-664, Div. "K", on behalf of your Petitioner seeking redress for certain personal injuries sustained by your Petitioner. Said Petition for Damages was filed by the Respondents Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent Craig S. Watson. Said Petition for Damages sought redress from Todd Electric, Inc., Sears Roebuck Company

and Flor-Line, Inc., for certain personal injuries on behalf of your Petitioner.

In the aforementioned Petition For Damages filed by the Respondents Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent Craig S. Watson, failed to properly demand a trial by jury in compliance with Art. 1733(a) of the Louisiana Code of Civil Procedure.

On or about August 29, 1985 Todd Electric Inc. filed an answer (R.253) to your Petitioner's complaint for damages through their attorney of records. In said answer request a trial by jury and so ordered on

On or about November 4, 1985 Sears Roebuck Company through their counsel of records filed an untimely answer (R.253) to your Petitioner's complaint for damages, which was uncontested by the Respondents.

On or about September 3, 1986, Todd Electric, Inc., filed a motion for summary

judgment (R.253) arguing Petitioner's (Leslie E. Knighten) recovery was limited to workers' compensation, because Todd Electric had not committed an intentional tort against him.

On or about October 22, 1986 the Respondents Cave and McKay, Attorneys At Law through their agent and\or employee, Respondent, Craig S. Watson, filed for the first time interrogatories to Todd Electric, Inc. (R.254) and to Rentenback (R.254). The said interrogatories were filed over 400 days after the filing of your Petitioner's complaint for damages.

On or about October 22, 1986 the Respondents Cave and McKay, Attorneys At Law through their agent and\or employee Respondent Craig S. Watson filed, for the first time, interrogatories to Sears Roebuck Company (R.253) being about 400 days after the filing of your Petitioner's complaint for damages.

The trial court for the 19th Judicial District Court in No. 290-664, Div. "K" set Todd Electric's Motion for Summary Judgment for hearing on October 17, 1986 . Said hearing was continued until November 21, 1986.

The Respondents, Cave and McKay, Attorneys At Law through their agent and\or employee Respondent, Craig S. Watson, failed to file any motions and\or take any defense (R.253-254), in petition form, prior to the hearing of said motion for Summary Judgment, in lite of the fact that interrogatories had been filed and were not answered.

The Respondents, Cave and McKay, Attorneys At Law through their agent and\or employee Respondent, Craig S. Watson, failed to file any motions and\or take any defense (R.253-254), in petition form, prior to the hearing of said motion for Summary Judgment, in respect to subject matter jurisdiction of

the court to be the trier of facts.

On or about November 26, 1986 aforesaid said trial court entered Judgment (R.254) in favor of Todd Electric, Inc. granting the motion for summary judgment dismissing Petitioner's suit with prejudice, but reserved Petitioner's right to proceed against the remaining defendants.

A motion for a New Trial (R.254) was filed on behalf of your Petitioner and came on for hearing on February 20, 1987. The Respondents, Cave and McKay, Attorneys At Law through their agent and\or employee Respondent, Craig S. Watson, failed to file any pleading and\or take any defense (R.253-254), in petition form, in respect to the slightest doubt test and\or similar test governing summary judgments; or the subject matter jurisdiction, in respect to the court being trier of fact; or raise an issue of error in respect to the trial Court entering

summary judgment without discover being propound (R.253-254).

On or about February 25, 1987 said motion for new trial was denied (R.254) by the trial court for the 19th Judicial District Court.

Without any transcript(s) of oral argument, Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee Respondent, Craig S. Watson, appealed (R.254) the ruling of the trial court to the First Circuit Court of Appeals, docket no. CA/87/0643.

The reply brief filed in the First Circuit Court of Appeals, docket no. CA/87/0643 by Todd Electric Inc. was filed untimely, which was uncontested by Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee Respondent, Craig S. Watson.

The decision of the trial court was

affirmed by the First Circuit Court of Appeals on or about the 14th day of January, 1988 (R.106-108). The Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee Respondent, Craig S. Watson, then applied for a Writ of Certiorari and/or Review of the Circuit Court's decision to the Supreme Court of the State of Louisiana in case No. 88-C-0336.

The Writ of Certiorari was denied by the Supreme Court of Louisiana on March 18, 1988.

Subsequent to the ruling by the Supreme Court of Louisiana entered on March 18, 1988, the Respondents Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson, and each of them, elected not to proceed against the remaining defendants in docket no. 290-664, Div. "K".

Approximately 27 days before legal malpractice prescription, being one year, had

expired and on or about February 20, 1989 the Petitioner, by way of Certified Mail, terminated the legal services of the Respondents, Cave and McKay, Attorneys At Law.

On or about March 9, 1989 the Petitioner filed a Petition For Damages seeking redress (R.110-121) against Respondents, Cave And McKay, Attorneys At Law, et al.; Respondent, Donald G. Cave; Respondent, John F. McKay; Respondent, Craig S. Watson And Unknown Indemnity Company, docket number 340-980, division "M" in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

The aforementioned Respondents responded to Petitioner's Petition For Damages seeking redress, being a legal malpractice claim, with an Exception in the form of a Motion For Prematurity (R.241-242) and pleaded in said motion, that Petitioner's legal malpractice

complaint was premature because Sears Roebuck Company and Flor-Line, Inc. were still Defendants in the above styled Leslie Knighten Vs. Todd Electric, Inc., Sears Roebuck Company, and Flor-Line, Inc. docket number 290-664, division "K" filed in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

On or about July 6, 1989 a Contract Of Employment was signed between Petitioner, Leslie E. Knighten and Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson, and each of them, and stipulated therein, by and through Respondent's agent, in said Contract Of Employment that "no unnecessary or unreasonable delays will occur in the prosecution of the above case." (R.270).

The Respondents were rehired to litigate with Sears Roebuck Company, the remaining

defendants and in the Petitioner's Worker's Compensation Claim against Todd Electric, Inc..

Subsequent, to the rehiring of the respondents, a Motion And Order For Voluntary Dismissal (R.244), being joint in nature, was entered "without prejudice" in the case styled Leslie E. Knighten Versus Cave And McKay, Attorneys At Law, et al., Donald G. Cave, John F. McKay, Craig S. Watson, et al., docket number 340-980, division "M" in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

On or about October 18, 1989 the Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson and each of them filed a request To Enroll As Counsel in the case styled Leslie Knighten Vs. Todd Electric, Inc., Sears Roebuck Company, and Flor-Line, Inc. docket number

290-664, division "K" filed in the 19th Judicial District Court, State Of Louisiana, Parish Of East Baton Rouge.

Subsequent to the signing of the Contract Of Employment signed on or about July 6, 1989 between Petitioner, Leslie E. Knighten and Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent Craig S. Watson and each of them, there has been three (3) depositions taken of the employees of Sears Roebuck Company and prior to the aforesaid depositions there were no depositions taken of the Sear's employees by the Respondents since the filing of the complaint filed on or about July 10, 1985.

Since the date of singing of the aforementioned Contract Of Employment, the Respondents, Cave and McKay, attorneys at law, by and through their agent and/or employee, Respondent, Craig S. Watson and

each of them, elected not to proceed against the remaining defendants in docket no. 290-664, Div. "K".

On numerous occasions the Petitioner requested, in letter form, that the Respondents furnish the Petitioner, Leslie Knighten, with a status report and information concerning his case, which was denied by the Respondents. The Petitioner was forced by action of the Respondents to make a demand (R.273-274), in letter form, in respect to a status report and information that was in the custody and control of the Respondents, this demand (R.273-274) was also denied by the Respondents and each of them.

By the actions or inactions of the Respondents, and each of them, the Petitioner's case was abandon. In addition the Respondents refused to furnish the Petitioner information concerning the status of his case and other information concerning

his case that was in the custody and control of the Respondents.

On or about November 20, 1991, as the consequence of the aforementioned, a Title 42 U.S.C. §1981 and\or §1983 and\or §1985 Complaint for damages seeking redress was filed by the Petitioner and against the Respondents, and each of them, in Federal Court for the Middle District of Louisiana, the jurisdiction was invoked under Title 28 U.S.C. §1331 and\or §1332 and\or §1343.

In this pending litigation, unlike the Exception of prematurity filed earlier, the Respondent have taken the defence this time that prescription has run, therefore alleged Petitioners' case is time bared and further alleged they are not subject to a Title 42 claim seeking redress for alleged violation of Petitioner's constitutional rights.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for one or any combination of the following reason(s):

I. For any one, or combination of reasons assigned under question I, which is as follows "Whether attorneys are given total immunity from claims seeking redress for alleged violations of civil rights pursuant to Title 42 U.S.C."

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

On or about February 27, 1992 a status conference was held in the Federal Building located in Baton Rouge, Louisiana, in regards to the Petitioners' complaint for damages, filed pursuant to Title 42, against the Respondents seeking redress for alleged violations of Petitioners constitution rights for legal services they performed for the

Petitioner. In said conference the Petitioner was informed by a United States Magistrate Judge, Honorable Stephen C. Riedlinger, that "attorneys have immunity from Title 42 claims" and was reminded of the requirements of Rule 11 regarding his claims brought pursuant to Title 42 §§1981, 1983 and 1985. The Petitioner informed the court that he would amend his complaint to reflect a legal malpractice complaint and a Scheduling Order was entered to reflect the same.[1]

The Petitioner timely amended his complaint to reflect a cause of action of negligence and\or legal malpractice. The District Court and the Court of Appeals ruled that Petitioner reserved his cause of action under Title 42 by pleading that "under any other unidentified statute not listed in the complaint which "enables Plaintiff a cause of

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[1] see Appendix I-1 & I-2

action against Defendants Cave & McKay"."[2]

In respect to Petitioner's Title 42 §1983 claim alleged in Petitioner's original complaint, the district court held the following; "Plaintiff's Sec. 1983 claim must also fall because the defendants are a private law firm and to state a cause of action under Sec. 1983, plaintiff must allege that discrimination resulted by one acting under color of state law. Since no state actor in involved, this claim too must fall."[3]

The Petitioner submits Title 42 §1983 is as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within

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[2] see footnote 6, Appendix B-16 & B-17

[3] see Appendix F-3

> the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

the intent of Title 42 §1983 is to provide a remedy at law for deprivation of rights as set out in the aforementioned paragraph and the Petitioner submits that the district court was in error in it's opinion that Petitioner must allege that "discrimination" resulted by one acting under color of state law, pursuant to Title 42 §1983.

In application of Title 42 §1983 in respect to "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" to this case the Petitioner's, but not necessarily limited to, First, Fifth, Seventh and Fourteenth

Amendment right secured by the Constitution are also secured by Title 42 §1983 for redress for the violation of any of Petitioners constitution rights.

In light of the aforementioned if the respondents violated any of the Petitioner's constitutional rights in the prosecution of Petitioner's suit against Todd Electric, Inc. as a consequence of ineffective or inadequate legal representation that resulted in the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws", then the respondents are subject to a suit seeking redress pursuant to a Title 42 §1983 claim, short of total immunity.

In the case at hand, the District Court and the Court of Appeals have ruled that attorneys and law firms have immunity from a complaint seeking redress for alleged violations of civil rights pursuant to Title 42 USC §1983, based upon their opinion that

the Respondents are private individuals and no state action exist, consequently are immune from suit.

To the contrary, the Petitioner submits that state action can be found in private individuals who (1) perform public functions or (2) have a significate state involvement see Marsh v. Alabama, 326 U.S. 501 (1946). Also see Shirley v. State Nat. Bank of Connecticut,[4] C.A. Conn. (1974) 493 F.2nd 739, writ denied, 95 S.Ct. 329 where the following is found, as follows:

> "Within the meaning of this section, a private person may act under color of law."

In application of the first test of Marsh, to this case, the respondents perform public functions in the private practice of law. Therefore, attorneys meets the test the

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[4] Shirley, was briefed and argued in the Court of Appeal, in support of the Petitioner's contentions.

Supreme Court set out in Marsh, short of Respondents enjoying total immunity.

In application of the second test of Marsh, to this case, the Respondents in this matter are attorneys, all of which: (1) have a license to practice law; (2) of all of the Title 42 litigants the Respondents are the only private individuals allowed to publicly practice law which involves a significate state action involving the protection of litigants constitutional rights; (3) Attorneys are the only private individuals required to take an oath, either directly or indirectly, to support the constitution of the United States, before they are allowed to practice law for the public; (4) Attorneys are the only private individuals that are considered to be an "officer of the Court" in their practice of law; (5) Attorneys are the only private individuals where there clients are a third party beneficiary between the

attorney and the State and\or The State Bar Association; (6) Attorneys are the only private individuals required by the constitution to furnish criminal defendants effective counsel; (7) In Louisiana, Attorneys are the only private individuals required to belong to the Louisiana State Bar Association before being allowed to practice law; and (8) Attorneys are the only private individuals that are members of a Bar Association, a state charted corporation (possibly state owned),[5] in order for them to

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[5] LOUISIANA STATE BAR ASSOCIATION: found in Title 37, Chapter 4 Appendix.

The LSBA is really a state chartered corporation; completely runs Louisiana practice of law; comes under same provisions as a nonprofit corporation. The LSBA is self-governing, and no one can practice law in La. unless duly licensed and admitted by LSBA (unless allowed to appear pro hac vice). Louisiana has an integrated bar, meaning can't practice unless member of state bar association.

Louisiana Supreme Court has original jurisdiction over disciplinary proceedings and sole authority to suspend or disbar.

practice law. Therefore, attorneys meets the test the Supreme Court set out in Marsh, short of Respondents enjoying total immunity.

The record is clear, in the opinion of the lower courts, attorneys are given total and absolute immunity from any suit seeking redress for any and all claims of alleged violation of constitutional rights pursuant to Title 42 §1983 or any unidentified section of Title 42.

The District Court and the Court of Appeals concluded that attorneys are in fact and law given immunity pursuant to a Title 42 Claims. However, the Respondents, the District Court and the Court of Appeals have

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"R.S. 37:211. The LSBA is created and regulated under the rule-making power of the Supreme Court of Louisiana, pursuant to a memorial addressed to the court by legislature Act 54 of 1940.

The association may organize under the general corporations laws of this state.

failed to cite any authorities in support of said immunity. The origin of attorneys immunity pursuant to claims seeking redress pursuant to Title 42 claims has yet be defined, unless it has be done by a Act of Congress. This Court has previously held to the contrary, in respect to defence attorneys seeking the same immunity enjoyed by judges and prosecutors, See Tower v. Glover, Or. (1984) 104 S.Ct. 2820, 467 U.S. 914

The Louisiana State Bar Association declined to take any disciplinary actions against the Respondents, for any professional misconduct, in light of the fact that the Respondents refused to inform the Petitioner of the status of his case.

The District Court and the Court of Appeals concluded that attorneys are in fact and law given immunity from any claims filed pursuant to any Title 42 Claims. Consequently, Rule 11 sanctions was imposed

against Petitioner.

What remedial action is appropriate against attorneys in litigation seeking redress for alleged violations of civil rights pursuant to Title 42 U.S.C. and under the authority of the First Amendment allowing "redress". If in fact and law attorneys are given immunity.

If in fact and law attorneys are not given immunity, then Petitioners constitutional rights of due process was violated by not receiving a fair and impartial trial.

II. For any one, or combination of reasons assigned under question number II., which is as follows "Whether imposing Rule 11 Sanctions against Petitioner, as a consequence of filing Title 42 claims against attorneys and\or a law firm, was an abuse of discretion".

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

On or about February 27, 1992 a status conference was held in the Federal Building located in Baton Rouge, Louisiana, in regards to the Petitioners' complaint for damages against the Respondents. In said conference the Petitioner was informed by a United States Magistrate Judge, Honorable Stephen C. Riedlinger, that "attorneys have immunity from Title 42 claims" and was reminded of the requirements of Rule 11 regarding his claims brought pursuant to Title 42 §§1981, 1983 and 1985. A Scheduling Order was entered to reflect the same.[6]

The sanctions were imposed against the Petitioner because in the opinion of the District Court and the Court of Appeals,

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[6] see Appendix I

attorneys are given total and absolute immunity from suits seeking redress for violations of civil rights pursuant to Title 42, in light of the fact that private individuals can constitute an action "under color of state law", see Marsh v. Alabama, 326 U.S. 501 (1946), Tower v. Glover, Or. (1984) 104 S.Ct. 2820, 467 U.S. 914, Shirley v. State Nat. Bank of Connecticut,[7] C.A. Conn. (1974) 493 F.2nd 739, writ denied, 95 S.Ct. 329.

And the Court further concluded; "While the district court is obliged to construe pro se pleadings liberally, it is not required to condone blatantly frivolous, vexatious, or harassing conduct. See Mayfield v. Klevenhagen, 941 F.2d 346, 348 (5th Cir. 1991) ("Although pro se litigants are given considerable latitude, Mayfield has consumed

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[7] Shirley, was briefed and argued in the Court of Appeal, in support of the Petitioner's contentions.

his portion of the court's patience and then some. . . . His wasting of increasingly scarce judicial resources must be brought to an end."). On the contrary, Rule 11 as then in force mandated that such activity be punished regardless of its source, and Congress specifically amended the rule in 1983 to include pro se litigants. See William W. Schwarzer, Sanctions Under the New Rule 11-A Closer Look, 104 F.R.D. 181, 184 (1985). By signing the original pleading, Appellant certified that, after making a "reasonable inquiry," he believed "the matter in his complaint were well-grounded in fact and warranted by existing law." Mayfield, 941 F.2d at 348."*

In application of Mayfield to the case at hand, was the Petitioner civil rights action for redress pursuant to Title 42 "blatantly frivolous," "vexatious", or did

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* see Appendix B-12 & B-13

the Petitioner demonstrate "harassing conduct" to warrant Rule 11 Sanction. The facts of this case will clearly demonstrate this case fails to suffice Mayfield, in respect to justification of the implication of Rule 11 Sanctions.

The Appellant Court allowed Rule 11 sanctions to stand against the Petitioner, as a consequence of "Congress specifically amended the rule in 1983 to include pro se litigants.

By Congress specifically amending the rule in 1983 to include pro se litigants. A reasonable man would conclude, if the Congress of the United States amended Rule 11 to include pro se litigants, one would believe they intended to include attorneys in Title 42 claims seeking redress for violation of alleged civil rights. Therefore, imposing Rule 11 sanctions against Petitioner was in error, in that respect.

The Petitioner submits that he has a constitutional right to have a belief. One of Petitioner's beliefs, is that attorneys are subject to a Title 42 claim for redress. Plaintiff's constitutional right to have a belief and constitutional right to redress, is protected by the First Amendment.

The right to communicate ideas was express in Jamison v. Texas, 318 US 413, 416, 87 Led 869, 872, 63 S.Ct 669, as follows:

> "But one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the Constitutional right to express his views in an orderly fashion."

in application of Jamison, to the case at hand, the lower court was in error by imposing Rule 11 Sanction on the Petitioner for expressing a belief and seeking redress against the Respondents under the protection of the First, Fifth and Fourteenth Amendments.

Additionally, the record will support that the Petitioner and Respondents both pleaded in the lower court that the Petitioner "believed" that attorneys were subject to a Title 42 claim.

III. For any one, or combination of reasons assigned under reason number III, which is as follows "Whether Title 42 United States Code Section 1981, excludes whites".

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

The summary judgment was entered in favor of the Respondents in respect to Petitioners' Title 42 §1981 based upon the Respondent's pleadings that Petitioner had to be "black" to suffice. The Petitioner contended that he didn't have to be "black" to state a cause of action pursuant to Title

42 §1981. This issue was briefed and argued in the lower Courts and supported by case law in support of Petitioner's contentions.

Additionally, Petitioner contended and briefed that the right to enforce a contract, wasn't the only right defined by Title 42 §1981. There is also the right to sue.....etc.

The lower Courts and Respondents failed to address the case authorities and issues raised by the Petitioner in respect to his contentions, in respect to this issue.

IV. For any one, or combination of reasons assigned under reason number IV., which is as follows "In a civil case, can ineffective or inadequate legal representation by an attorney and\or law firm violate the minimum requirements of the due process clause or violate any other constitutional guarantees.".

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

The Petitioner could cite numerous criminal cases authorities, in respect to the constitutional obligation of attorneys involved in defending criminal defendants and the requirements of due process, in respect to a criminal case.

The Fifth Circuit Court of Appeals has previous ruled in a criminal case if an attorney regardless if appointed or obtained ineffectively defends a criminal defendant and that defendant is convicted as the result of ineffective legal representation, due process has been violated. The Petitioner submits that in this situation, the criminal defendant, if convicted, could get a new trial.

The Petitioner submits that his

constitutional rights of redress, right to a fair and impartial trial, and the constitutional right to a trial by jury can be violated by ineffective legal representation by his attorney, thereby constituting a violation of Petitioner's constitutional rights. Unlike the criminal defendant, the civil litigant cannot get a new trial based upon ineffective legal representation by his attorney.

The Petitioner is unaware of any case law authorities in civil litigation, in respect to violation of any constitutional rights being violated by ineffective legal representation by an attorney. The Petitioner believes that this is a far reaching question and one of the underlying issues, in the case at hand.

In the late seventies or early eighties, this Honorable Court came close in making a similar ruling in a case involving court

appointed attorneys in a child custody case of an imprisoned mother. Some of the Supreme Court Justices submitted that it would open the "flood gates" in respect to court attorneys in application of due process requirements in a civil case. However, the Petitioner submits that due process requires some form of standards on attorneys.

Additionally, the Petitioner respectfully submits, that if there is no constitutional requirements on attorneys involved in civil litigation, there is also no constitutional standards for the practice of law in civil litigation.

If Plaintiff's attorney fails to fully protect his clients constitutional rights or provided ineffective or inadequate legal representation to be effective. Subsequently, looses Plaintiff's case for redress or failed to challenge the court's jurisdiction to be trier of fact in a jury trial case. Did the

attorney violate Petitioner's constitutional right to redress, to sue, the right to a fair and impartial trial or the right to a trial by jury, guaranteed the Petitioner by the First, Fifth, Seventh and Fourteenth Amendments to Constitution of the United States.

V. For any one, or combination of reasons assigned under reason number V., which is as follows "Whether Petitioner's legal malpractice claim seeking redress was prescribed, pursuant to a one year prescription period under LSA-C.C. 3492 or subject to a ten year prescription period under LSA-C.C. 3499;"

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

First and foremost, the Petitioner

respectfully submits that some of the facts stated in the opinion of the Court of Appeals found in Appendix B, copied as if copied word for word and figure, is incorrect and inconsistent with the facts and record of the case, in the following prospective;

(1) in Appendix B-4, the following is found:

> "On June 6, 1989, however, Appellant voluntarily dismissed that suit and immediately rehired the firm to continue his suit against Sears."

in respect to the incorrectness and inconsistency of the facts as cited in above-mentioned paragraph. The Petitioner submits the following; The contract of employment is dated June 12, 1989 by Respondent, Craig S. Watson, and the Motion and Order for voluntary Dismissal[9] is signed by Judge Joseph F. Keogh, 19Th Judicial District Court, on July 6, 1989, therefore in

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[9] see Appendix K-1 & K-2

light of this fact alone the Court of Appeals was incorrect and inconsistent with the facts in asserting that "Appellant voluntarily dismissed that suit and immediately rehired the firm". The facts and record are to the contrary, the Respondents warranted a specific result in the Contract of Employment and subsequently the suit was dismissed.

In response to "continue his suit against Sears." the Petitioner submits that; on June 6, 1989 the Petitioner and Respondent, Cave & McKay, et al., by and through their agent, Respondent, Craig S. Watson, agreed that Respondents, Cave & McKay, Attorneys at Law, would in fact represent the Petitioner in the pending action against Sears, the remaining defendants and in the workers' compensation case against Todd Electric, Inc., based upon the dismissal of Petitioners' state action for legal malpractice. Consequently, a

Contract of Employment was signed by Respondent, Craig S. Watson and the Petitioner, Leslie E. Knighten. In said Contract of Employment it was stipulated by the Respondents that "If the claim is only for workmen's compensation benefits, the fee will be 20% of the first $5,000.00 of recovery and 10% of all amounts recovered of that, as fixed by law." This stipulation was in reference to the fees regarding the handling of Petitioner's Workers' compensation claim against Todd Electric, Inc.. Therefore, the Petitioner submits that the Court of Appeals was incorrect and inconsistent with the facts in asserting that Petitioner rehired the firm to continue his suit against Sears, Petitioner rehired the Respondents to represent him in the Workers' compensation litigation against Todd Electric, Inc., as well as against Sears and the remaining defendants. At least that was, in fact, the agreement between the Petitioner

and Respondents.

Additionally, the Petitioner requested that it be stipulated in writing on said Contract of Employment by the Respondents that no delays would accrue in Petitioners' pending state actions. Respondent, Craig S. Watson, stipulated by hand writing on said Contract of Employment that "No unnecessary & unreasonable delays will occur in the prosecution of the above case."

The Petitioner submits that the Respondents were very clever in shielding their true intentions in respect to their drafting of the Motion And Order For Voluntary Dismissal[10] "Without Prejudice" and very clever in shielding their true intentions in respect to the future legal representation they were going to provide the Petitioner after dismissal of Petitioner's complaint for damages.

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[10] see Appendix K-1 & K-2

The Petitioner submits that the Motion And Order For Voluntary Dismissal (R.224) filed on or about June 6, 1989 states the following "NOW INTO COURT, through undersign counsel, comes plaintiff, Leslie E. Knighten, and defendants, Cave & McKay,". Therefore, it is a joint motion between the Petitioner and Respondents, and there were concessions made to the Appellant by the Appellees or he would not have agreed to dismiss his complaint even "without prejudice" which allows, as a matter of law, a new suite to be brought on the same cause of action.

The district court dismissed the claims of legal malpractice as being time barred. Louisiana generally applies a one-year prescriptive period to claims of legal malpractice. Lima v. Schmidt, 595 So.2d 624, 628 (La. 1992); LA. CIV. CODE ANN. art. 3492 (West 1992). The Court recognizes two exceptions to this general rule:

(1) where the attorneys expressly warrants a specific result and fails to obtain that result, See Lima, 595 So.2d at 628 n.2.. In application of this exception to this case the Respondents stipulated by their agent, Respondent, Craig S. Watson, by hand writing on the Contract of Employment that "No unnecessary & unreasonable delays will occur in the prosecution of the above case." Subsequently, the Petitioners' timely state action for legal malpractice was jointly dismissed based upon a "specific result" as stipulated on said Contract of Employment that "No unnecessary & unreasonable delays will occur in the prosecution of the above case." The record is clear, unnecessary and unreasonable delays did occur in the prosecution of Petitioners case. Therefore, Petitioner's claims of legal malpractice wasn't time barred and was in error for the district court to dismiss this case as being time barred.

and (2) where the attorneys agrees to perform certain work and does nothing whatsoever, See Lima, 595 So.2d at 628 n.2. In application of this exception to this case, the Petitioner submits that the amount of work preformed by the Respondents on Petitioner case constitutes no work, taking into consideration the amount of time the Respondent had Petitioner's case in their custody and control to preform work.

In Respondents Brief at page 8 the following is found, "there have been three (3) depositions taken of the employees of Sears Roebuck Company.". The Petitioner agrees, however all of these depositions were taken on December 8, 1989 commencing at 10:05 a.m., and ending at 12:15 p.m., the deposition were taken at Sears Roebuck Company approximately five miles from the office of the Respondents. All of the witnesses had been employed there since 1985,

and it took over four years for the Appellees to depose them and then only after Petitioner had filed his complaint for damages. Respondents deposed the witnesses about six months after Petitioner complaint was dismissed and approximately six months before July 6, 1990 the date the Respondents allege prescription expired. On or about January 18, 1991 the Petitioner was deposed by Sears Roebuck Company and Todd Electric, Inc., at the Respondent's law firm located in Baton Rouge, Louisiana and Respondent, agent, Craig S. Watson represented the Petitioner in this deposition. Consequently, the Petitioner had no way of knowing that the Respondents's were remaining silent and allowing the silent running of prescription. The Respondents action is in conflict with the following Louisiana authority found in

Jackson v. Zito, App. 1975, 314 So.2d 401, writ denied 320 So.2d 551, 553:

district court.

The Petitioner further submits that the running of prescription commenced after January 18, 1991 and Petitioner's original complaint was filed on or about November 20, 1991 well within prescription.

Additionally, Petitioner pleaded in lower court the application of Lima, to his case, under LSA-C.C. 3499, where prescription is governed by a ten year prescription period as the result of being a third party beneficiary of, a contract to practice law, between the Respondents and each of them, and the Louisiana Bar Association and\or the state of Louisiana. This theory is in respect to professional conduct and\or standard to practice law in respect to attorneys professional responsibilities to his client. This issue wasn't addressed by the Court.

VI. For any one, or combination of reasons assigned under question VI., which is as follows "Whether the Petitioner's constitutional right to a fair and impartial trial was violated"

In respect to the aforementioned question presented to Supreme Court for consideration the Petitioner respectfully submits the following;

For one, or any combination of reasons set forth in this writ, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Fifth Circuit in this matter to enforce Petitioner's constitutional right to a fair and impartial trial and\or hearing.

Additionally, the Petitioner submits that the Courts was fundamentally unfair in their ruling, one example is by disregarding Petitioner's numerous claims for sanctions in respect to the Respondent's untruthful

pleadings.

The Petitioner has requested this Honorable Court for an extension of time in which to file his writ, which was denied.

The Petitioner has been unable to completely address his contentions, submitted for consideration within this writ. The Petitioner respectfully request that his future rights, if any, to fully address his questions be reserved.

CONCLUSION

The Petitioner was informed by a United States Magistrate Judge, Honorable Stephen C. Riedlinger, in a status conference that "attorneys have immunity from Title 42 claims" and was reminded of the requirements

of Rule 11 regarding his claims brought pursuant to Title 42 §§1981, 1983 and 1985. The Petitioner was intimidated by the threat of sanctions, consequently amended his complaint, and was forced litigate his beliefs and rights at a very a minimum.

The Petitioner submits to this Honorable Court and for the record, that the Magistrate Judge conducted the status conference in a very professional manner, in that he spoke in a soft tone, he was mild mannered and seemed to be an exceptionally pleasant individual. In no way was the Petitioner ever intimidated by the treatment of the Magistrate.

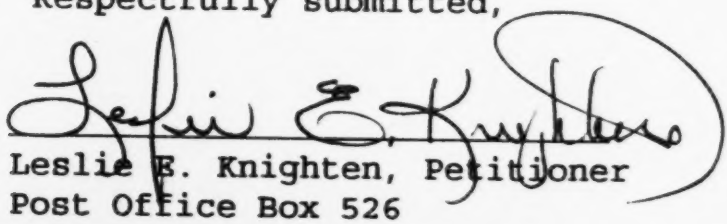
However, from the onset, the Petitioner was at an unconstitutional disadvantaged position for fear of sanctions being imposed for filing the Title 42 claim against Respondents seeking redress for alleged violation of his constitutional rights. Consequently, Petitioners right to litigate

his beliefs were suppressed and Petitioner couldn't freely litigate his contentions as he would have without the fear of sanctions being imposed, which may or may not be reversed on an appeal, to the Court of Appeals.

For one, or any combination of reasons set forth in this petition, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Fifth Circuit in this matter.

THIS, the 26th day of October, 1994.

Respectfully submitted,



Leslie E. Knighten, Petitioner
Post Office Box 526
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Supreme Court, U.S.
FILED

(2)

Number: 94 803 OCT 27 1994

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1994

Leslie E. Knighten, Petitioner

Versus

Cave And McKay, Attorneys At Law, Et Al., Donald G. Cave, John F. McKay, Craig S. Watson, Unknown Corporation and\or Corporations and Unknown Indemnity Company, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Leslie E. Knighten, Pro Se
Post Office Box 526
Quitman, Mississippi 39355
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59pp

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JUL 29 1994
CHARLES R.FULBRUGE III,
CLERK

No. 92-3804
Summary Calendar

LESLIE E. KNIGHTEN,
Plaintiff-Appellant,

versus

CAVE & MCKAY, Attorneys
at Law, ET AL.
Defendants-Appellees

Appeal from the United States District Court For the Middle District of Louisiana (CA-91-1063-A-M1)

Before GARWOOD, SMITH and DEMOSS, Circuit Judges

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the brief on file.

ON CONSIDERATION WHEREOF, It is now ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the cost on appeal to be taxed by the Clerk of this Court.

July 29, 1994

ISSUED AS MANDATE: AUG 22 1994

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JUL 29 1994
CHARLES R.FULBRUGE III,
CLERK

No. 92-3804
Summary Calendar

LESLIE E. KNIGHTEN,
Plaintiff-Appellant,

versus

CAVE & MCKAY, Attorneys
at Law, ET AL.
Defendants-Appellees

Appeal from the United States District Court For the Middle District of Louisiana (CA-91-1063-A-M1)

Before GARWOOD, SMITH and DEMOSS, Circuit Judges:*

Plaintiff-appellant Leslie E. Knighten (Appellant), a citizen of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expenses on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

"s/ WG, JS, HRD".

Mississippi, brought a pro se action under Title 42 U.S.C. §§1981, 1983, and 1985 against defendants-appellees, citizens of Louisiana, Cave & McKay, John F. McKay, Donald G. Cave, and Craig S. Watson (collectively Appellees), seeking over $3,000,000 damages for alleged violation of his constitutional rights for legal services they performed for him in a personal injury lawsuit. Appellant later amended his complaint to convert the civil rights claims into allegations of malpractice. The district court granted summary judgment in favor of Appellees and sanctioned Appellant $1,500 under Rule 11 for bringing a frivolous civil rights action. Appellant now appeals both the grant of summary judgment and the Rule 11 sanctions. We Affirm.

Facts and Proceedings Below

Appellant was injured on March, 30, 1985, while working as an electrician for

Todd Electric in Baton Rouge, Louisiana. Shortly thereafter, he employed the law firm of Cave & McKay to represent him in a Louisiana state court action for personal injury and intentional tort against Todd Electric, Sears Roebuck & Company (Sears), and several other defendants. On November 26, 1986, the state ruled that his recovery against Todd Electric was limited to worker's compensation benefits because his injury did not result from any intentional tort on the part of his employer. The court dismissed his suit against Todd Electric but reserved his right to proceed against Sears and the remaining defendants. An appellant court affirmed this decision, and on March 18, 1988, the Louisiana Supreme Court denied certiorari.

On February 20, 1989, Appellant terminated the legal services of Cave & McKay and two weeks later filed a state

court action against the firm for malpractice. On June 6, 1989, however, Appellant voluntarily dismissed that suit and immediately rehired the firm to continue his suit against Sears. Appellant became increasingly dissatisfied with the handling of the suit against Sears and once again discharged the firm. On November 20, 1991, he filed the present federal court action asserting numerous civil rights violations for Appellees' failure to adequately protect his legal rights regarding the Todd Electric litigation. At a status conference on February 27, 1992, a magistrate judge warned Appellant that filing such frivolous civil rights claims would incur sanctions under Rule 11, FED.R.CIV.P. On March 27, 1992, Appellant amended his complaint to include claims of legal malpractice and to delete the civil rights

claims.[1] On June 25, 1992, the district court granted summary judgment in favor of Appellees and sanctioned Appellant $1,500. Appellant now appeals both the grant of summary judgment and the award of Rule 11 sanctions. Appellees seek additional damages under Rule 38, FED.R.APP.P., for having to defend against a frivolous appeal. We affirm the district court's grant of summary judgment and imposition of Rule 11 sanctions, but deny Appellees' request for Rule 38 sanctions.

Discussion

I. Prescription of Malpractice Claim

This Court reviews a grant of summary judgement de novo. Exxon Corporation v. Burglin. 4 F.3d. 1294, 1297 (5th Cir. 1993). Summary Judgment is only

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[1] Appellant's amended complaint, however, retained its original reference to 28 U.S.C. §1343 (original jurisdiction over civil rights claims). Jurisdiction was also asserted under 28 U.S.C. §1332 (diversity).

appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED.R.CIV.P. 56(c). As the party moving for summary judgment, Appellees carry the initial burden of pointing out the respects in which there is an absence of evidence to support the nonmovant's case. Burglin, 4 F.3rd at 1297; Celotex Corp. v. Catrell, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553 (1986). After consulting the applicable substantive law to determine what facts and issues are material, we review the evidence in a light most favorable to the nonmovant to determine if any triable issues of fact exist. Burglin, 4 F.3rd at 1297.

The district court dismissed the claims of legal malpractice as being time barred. Louisiana generally applies a one-year prescriptive period to claims of

legal malpractice. Lima v. Schmidt, 595 So.2d 624, 628 (La. 1992); LA. CIV. CODE ANN. art. 3492 (West 1992). The state recognizes two exceptions to this general rule: (1) where the attorneys expressly warrants a specific result and fails to obtain that result, and (2) where the attorneys agrees to perform certain work and does nothing whatsoever. See Lima, 595 So.2d at 628 n.2. Neither of these situations applies in the present case. Appellant has made no allegation that Cave & McKay warranted any particular result, and the record clearly indicates that the law firm did as least do some work on the case including filing the original complaint and beginning discovery. Thus, the one-year prescriptive period began to run no later than March 18, 1988, when the Louisiana Supreme Court declined to review

Appellant's case against Todd Electric.[2] Filing the initial state court acted to toll the statue of limitations while the suit was pending, LA. CIV. CODE ANN. art. 3463 (West 1993); however, prescription began to run anew from the date of the voluntary dismissal of the suit on July 6, 1989. Because Appellant did not file the present federal court action until November 20, 1991, the prescriptive period had expired and his suit appears time barred.

Where, as here, the plaintiff's complaint on its face reveals that prescription has run, "the burden in on the plaintiff to show why the claim has not prescribed." Lima, 595 So.2d at 628.

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[2] Appellant has failed to argue any malpractice claim against Cave & McKay regarding his suit against Sears and the other defendants or his unrelated slander suit against Dr. Wilkerson. Thus, both claims are considered abandoned on appeal.

Appellant argues that we should apply the doctrine of contra non valentem non currit praescriptio, meaning that prescription does not run against a person who could not bring his suit. Id. at 629. This doctrine tolls the statute of limitations for malpractice in certain situations where the attorneys fraudulently conceals his fault, remains silent while the prescriptive period expires, or otherwise deliberately prevents his client from discovering a cause of action for malpractice.[3] Id. The present case does not

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[3] Louisiana courts also recognize the similar doctrine of "continuous representation." *Lima*, 595 So. at 630. Under this doctrine, prescription is "suspended during the attorney's continuous representation of this client regarding the specific subject matter in which the alleged wrongful act or omission occurred." *Id.* (citation omitted). In the present case, Appellees continued to represent Knighten regarding his claim against the remaining defendants until November 1991, but they did not represent him regarding the Todd Electric litigation beyond the Louisiana Supreme Court's denial of certiorari on March 18, 1988.

involve any such activity. Appellant is charged with knowledge of law pertaining to his claim, including the applicable statutes of limitations. He was aware of all necessary facts giving rise to his malpractice claim, if any such claim existed, as of the filing of his state court action against his attorneys in February 1989--more than two and one-half years before he filed the present federal court action. As appellant has offered no summary judgment evidence nor alleged any specific facts that would contradict this finding, we conclude that he failed to carry his burden of proving that his claim is not prescribed, and thus, summary judgment was appropriate.

Appellant also argues that he was denied due process because the district court did not allow him to propound

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Thus, continuous representation is inapplicable.

discovery before granting defendants' motion for summary judgment. However, a party seeking additional discovery

> "must show the additional discovery will defeat the summary judgment, that is, will create a genuine dispute as to a material fact, and 'may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts.'" International Shortstop, Inc. v. Rally's Inc., 939 F.2d 1257, 1267 (5th Cir. 1991), cert. denied, 112 S.Ct. 936 (1992) (Citation Omitted).

If the district court determines that addition discovery is unlikely to generate evidence pertaining to the motion for summary judgment, "the district court may, in its discretion, proceed to rule on the motion without further ado." Id. Appellant makes and made no attempt to explain what facts he hopes to uncover that might affect prescription. Therefore, the district court acted within its discretion in disposing of the matter without permitting irrelevant and unnecessary

discovery.

II. Rule 11 Sanctions

Appellees sought sanctions against Appellant for bringing an "unquestionably frivolous" civil rights action and for pursuing a malpractice claim that had clearly prescribed. The district court sanctioned Appellant $1,500 to partially defray Appellees' expenses of defending the frivolous civil rights claim. We review a sanction by the district court only for an abuse of discretion. Thomas v. Capital Security Services, Inc., 836 F.2d 866, 873 (5th Cir. 1988) (en banc). While the district court is obliged to construe pro se pleadings liberally, it is not required to condone blatantly frivolous, vexatious, or harassing conduct. See Mayfield v. Klevenhagen, 941 F.2d 346, 348 (5th Cir. 1991) ("Although pro se litigants are given considerable latitude, Mayfield has consumed his portion of the

court's patience and then some. . . . His wasting of increasingly scarce judicial resources must be brought to an end."). On the contrary, Rule 11 as then in force mandated that such activity be punished regardless of its source, and Congress specifically amended the rule in 1983 to include pro se litigants. See William W. Schwarzer, Sanctions Under the New Rule 11-A Closer Look, 104 F.R.D. 181, 184 (1985). By signing the original pleading, Appellant certified that, after making a "reasonable inquiry," he believed "the matter in his complaint were well-grounded in fact and warranted by existing law." Mayfield, 941 F.2d at 348. The objective aspect of the "reasonable inquiry" dictates that a party electing to represent himself in court bears the burden of reading and understanding the applicable law. Cf. Thomas, 836 F.2d at 873 ("Rule 11 compliance is now measured

by an objective, not subjective, standard of reasonableness under the circumstances.").

Appellant argues that he effectively abandoned these claims by amending his complaint and deleting all references to Title 42. The district court was not persuaded,[4] and neither are we. First, both the original intent and the plain language of Rule 11 require the reviewing Court to consider the litigant's conduct at the time each pleading is signed. Thomas, 836 F.2d at 874. "Like a snapshot, Rule 11 review focuses upon the instant when the picture is taken--when the signature is placed on the document." Id. Under Rule 11

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[4] The district court stated:

"Plaintiff has apparently attempted to abandon the civil rights claims by calling them 'moot' in the amended complaint in a belated move at correction. The court has, however, been required to pass upon those claims because of the ineptness of the amended complaint."

as then in force, subsequently amending one's lessened the severity of the "appropriate sanction" but did not eliminate the original violation. Id. at 875 (Rule 11 applies to each and ever paper signed during the course of the proceeding and requires that each filing reflect a reasonable inquiry".) Secondly, any "reasonable inquiry" would reveal Appellant's civil rights claims to be patently frivolous. He had entered into a private employment contract with a private law firm. No Section 1983 claim ever arose because no state action was ever involved. Section 1981, while not requiring state action, only guarantees the right "to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981. No matter how liberally we construe his complaint, we cannot conceive of how Appellant, a white male, might have been deprived of this right by his law firm,

consisting of white males, simply because the firm failed to recover as much money as he felt he deserved. Finally, Appellant's amended complaint, ostensibly intended to retract the civil rights claims, seems to insist that such claims are proper and that the district court erred in denying them,[5] as if attempting to evade the magistrate's threat of sanctions while encouraging this Court to bestow damages for those very same claims.[6]

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[5] On appeal, Appellant insists that he has a right to enforce contracts, and that the district court committed "unlawful racial discrimination" by refusing to allow a white plaintiff to bring a section 1981 claim against a white defendant when an African-American plaintiff might be allowed to bring such a claim. This meritless argument ignores the plain language of section 1981 and merely serves to demonstrate Appellant's reluctance to abandon these claims.

[6] For instance, the amended complaint suggests that, "in the event the Plaintiff['s] claim . . . is insufficient to suffice for a cause of action of negligence and/or legal malpractice," the court should grant damages under any other unidentified statute not listed in the

We recognize that Appellant is a pro se litigant and that he has as least made a belated attempt to correct his errors; however, we are not willing to infringe upon the district court's discretion in these matters. We are not asked to decide "whether this Court, in its own judgment and as an original matter, would have imposed any of these sanctions," but rather "whether the district court abused its discretion in doing so." Topalian v. Ehrman, 3 F.2d 931, 934 (5th Cir. 1993) (citing National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 642, 96 S.Ct. 2778, 2780 (1976). Due to the obvious frivolity of the civil rights claims and Appellant's unwillingness to abandon them, we conclude the court acted within its discretion and accordingly affirm its imposition of sanctions.

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complaint which "enables Plaintiff a cause of action against Defendants Cave & McKay . . . ."

III. Rule 38 Sanctions

Finally, the defendants argue that they are entitled to damages in the amount of $5,000 under Rule 38, FED.R.APP.P. Rule 38 permits an appellant court to award damages to the appellee if the court determines the appeal is frivolous. "An appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." Coghlan v. Starkey, 852 F. 2d 806, 811 (5th Cir. 1988). While we find the present appeal meritless, we do not consider it so unreasonable as to warrant additional sanctions. The courts have shown a particular reluctance to impose sanctions under Rule 38 when the appeal challenges a finding that is not mandatory, such as an abuse of discretion. See id. at 811 n.8. Thus, we conclude that Rule 38 sanctions would be inappropriate.

Conclusion

Accordingly, the district court's

grant of summary judgment and imposition of Rule 11 sanctions are AFFIRMED, and the defendants' motion for Rule 38 sanctions is Denied.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 Sept 1 PM 3:10
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE M. KNIGHTEN

versus

CAVE & MCKAY, ET AL

AMENDED JUDGMENT

For the written reasons assigned and filed herein:

IT IS ORDERED that the judgment entered herein on June 25, 1992 is hereby amended to reflect that defendants' motion for sanctions is granted, and plaintiff shall pay defendants the sum of $1,500.00 within 15 days of the date of this judgment.

Baton Rouge, Louisiana, September 1, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

APPENDIX C-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 Aug 21 PM 2:11
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE M. KNIGHTEN

VERSUS

CAVE & MCKAY, ET AL

RULINGS ON MOTION
FOR NEW TRIAL

This matter is before the court on a timely motion by plaintiff for a new trial. No opposition has been filed. There is no need for oral argument. Jurisdiction was based on diversity as well as the civil rights claims. Plaintiff is domiciled in Mississippi.

A motion for new trial in a nonjury action must be based upon manifest error of law or mistake of fact. 11 C. Wright & A. Miller, Federal Practice and Procedure:

Civil §2804. A judgment should not be set aside except for substantial reason. Id.

Plaintiff has failed to show and substantial reason for setting aside the judgment.

Accordingly, the motion by plaintiff for new trial is hereby DENIED.

Defendants have filed a second motion, presently noticed for December 18, 1992, seeking the imposition of additional sanctions against plaintiff based on his filing the motion for new trial. The second motion for sanctions is hereby DENIED.

The Clerk shall prepare an amended judgment which incorporates the original sanctions imposed by the court in its ruling dated June 23, 1992.

Baton Rouge, Louisiana, August 21, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

APPENDIX D-2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 June 25 AM 10:32
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN

VERSUS

CAVE AND MCKAY, ET AL

J U D G M E N T

For the written reasons assigned and filed herein:

IT IS ORDERED ADJUDGED AND DECREED that the motion for summary judgment filed on behalf of defendants is hereby GRANTED and this action is hereby DISMISSED.

Baton Rouge, Louisiana, June 25, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 June 23 PM 4:45
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN,

VERSUS

CAVE & MCKAY, ET AL

RULINGS ON MOTION

This matter is before the court on motions by all defendants for summary judgment and/or motion to dismiss, and a motion for sanctions. An opposition has been filed. There is no need for oral argument. Jurisdiction is allegedly based on 28 U.S.C. §1332, diversity of citizenship, and 42 U.S.C. §§1991, 1983 and 1985.

Defendants argue that any claims for legal malpractice have prescribed and the

claims under Title 42 are without merit.

Essentially the facts are that plaintiff, a white male, was injured in the course and scope of his employment with Todd Electrical Company. He contracted with Craig Watson, attorney with the law firm of Cave and McKay, to sue his employer in tort for the injuries he received as a result of an electrical shock. Plaintiff's law suit against his employer was dismissed by summary judgment. Plaintiff's motion for new trial and his appeal to the First Circuit were both denied, as was his writ of review to the Louisiana Supreme Court.

TITLE 42 CLAIMS

Plaintiff seeks to recover damages under 42 U.S.C. §§1981, 1983 & 1985, however his claims are extremely nebulous. In plaintiff's memorandum in opposition, he states that his claims under Title 42 are "moot" in light of his amended

complaint. Be that as it may, his claim under §1981 will not survive summary judgment because even though no showing of state action is required, a showing of racial discrimination in the making or enforcing of contracts is required. Plaintiff has failed to state in his complaint or amended complaint any facts that would indicate to this court that he was discriminated against in conjunction with his contract with defendants. Plaintiff's §1983 claim must also fall because the defendants are a private law firm and to state a cause of action under §1983, plaintiff must allege that discrimination resulted by one acting under the color of state law. Since no state actor is involved, this claim too must fall. Finally, for plaintiff's §1985 claim to survive, he must prove a class-based invidious discriminatory animus. After a through review of the submitted

complaints, the court cannot find even a trace of any type of class based discrimination. Without this, plaintiff's burden has not been met and this claim must be dismissed.

With all of plaintiff's Title 42 claims failing to survive summary judgment, the only remaining basis for subject matter jurisdiction is diversity of citizenship.

MALPRACTICE CLAIMS

Plaintiff also claims that the legal representation provided by defendants in the action against the employer constituted negligence, legal malpractice and precipitated his damages. He further asserts, in brief, that even though defendants were not under contract to litigate against a Dr. Wilkerson on his behalf, their refusal to timely turn over certain necessary requested documents allowed prescription to run on a suit he

had filed in Mississippi on January 17, 1992. This claim is entirely unrelated to the malpractice claim and is not alleged in either the original or amended complaint (or at least the complaint is so vague that the claim cannot be identified).

Defendants argue that any legal malpractice claim that may be available to plaintiff from the action against the employer has long since prescribed, and that plaintiff never contracted with Cave and McKay to bring any action against Dr. Wilkerson for which a charge of malpractice could be lodged.

In **Lima v. Schmidt**, 595 F.2d 624 (La. 1992), the Supreme Court recently held that normally, legal malpractice suits are governed by the one year prescription for delictual actions under LSA-C.C. 3492. This, however is not without exception; if an attorney guarantees a result or

performs no work at all, he may be subject to an action under contract law and governed by the ten year prescriptive period under LSA-C.C. 3499.

Consequently, plaintiff's malpractice claims have prescribed unless he can allege and support facts that will allow his claims to fall within the exception and trigger the ten year prescriptive period set forth. **Lima, supra.** Both Knighten's complaint and amended complaint make vague attempts at characterizing the action or lack of action by defendants in their legal representation provided, but the allegations are clearly not sufficient to plead the exception set forth above. Since the undisputed facts clearly establish that prescription has run as to the action against the employer, summary judgment is appropriate as to that claim.

Knighten also attempts to expand his allegations through his memorandum in

opposition by further expounding upon the allegations surrounding Dr. Wilkerson, but the memorandum is not the complaint.

As to the claim involving the otherwise unidentified Dr. Wilkerson, plaintiff's pleadings are incomprehensible and that claim also falls.

Sanctions

Defendants seek sanctions, alleging that plaintiff has filed claims under Title 42 which are unquestionably frivolous and without merit and has pursued a malpractice claim that defendants argue has clearly prescribed.

Plaintiff has apparently attempted to abandon the civil rights claims by calling them "moot" in the amended complaint in a belated move at correction. The court has, however, been required to pass upon claims because of the ineptness of the amended complaint. Pro se litigants are as much subject to Rule 11 Fed.R.Civ.P. as are

lawyers. Every signature on a pleading "constitutes a certificate by the signer that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law . . . " A person who elects to represent himself in court bears the burden of reading and understanding applicable law. The law applicable to federal civil rights claims, such as are attempted to be asserted here, is well established and absolutely clear. The claims are clearly non-meritorious and frivolous and including them in the original complaint constituted a violation of Rule 11.

Rule 11 mandates a sanction for every violation (the court "shall impose . . . an appropriate sanction "). In this case, the court determines that payment by plaintiff to defendants of the sum of $1,500, in partial defrayment of the

expenses of defending the frivolous civil rights claims, is appropriate.

Accordingly, the motion of defendants for summary judgment is hereby GRANTED, and this action shall be dismissed.

IT IS FURTHER ORDERED that within fifteen (15) days of the date of the judgment in this mater, plaintiff shall pay to defendants the sum of $1,500. Defendants shall file proof of such payment in this record.

Baton Rouge, Louisiana, June 23, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 June 18 PM 2:21
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN, Plaintiff

VERSUS

CAVE AND MCKAY, ATTORNEYS AT LAW, ET AL., DONALD G. CAVE, JOHN F. MCKAY, CRAIG S. WATSON, UNKNOWN CORPORATION AND\OR CORPORATIONS AND UNKNOWN INDEMNITY COMPANY, Defendants

ORDER

THIS CAUSE having come on by Plaintiff's Motion For Continuance and the Court finds that Plaintiff's Motion is well taken and is here ~~granted~~ DENIED.

IT IS THEREFORE ORDERED that the Plaintiff cause is continued until such time that discovery has been propound; ALTERNATIVELY, IT IS THEREFORE ORDERED that the Plaintiff have an additional ___

days in which to appear before this Court and said time beginning to run from the _____, day of _____, 1992.

SO ORDERED, this the 10th day June, 1992.

"s/John V Parker"
U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 March 31 AM 10:49
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN, Plaintiff

versus

CAVE AND MCKAY, ATTORNEYS AT LAW, ET AL., DONALD G. CAVE, JOHN F. MCKAY, CRAIG S. WATSON, UNKNOWN CORPORATION AND\OR CORPORATIONS AND UNKNOWN INDEMNITY COMPANY, Defendants

ORDER

THIS CAUSE having come on by Plaintiff's Motion For Leave To Amend Complaint and the Court finds that Plaintiff's Motion is well taken and is hereby granted.

SO ORDERED, this the 30th day of March, 1992.

"s/ Stephen C. Riedlinger "
UNITED STATES MAGISTRATE JUDGE

APPENDIX H-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 March 3 AM 11:18
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN,

VERSUS

CAVE & MCKAY, ET AL.

SCHEDULING ORDER

A status conference was held on February 27, 1992.

PRESENT: Leslie E. Knighten
In proper person

Craig Watson
Greg Beard
Attorney for defendants

Plaintiff was reminded of the requirements of Rule 11 regarding his claims brought pursuant to 42 U.S.C. §§1981, 1983 and 1985. Plaintiff advised that he intends to move to amend his

complaint to specifically allege a legal malpractice claim and will propound discovery request.

Plaintiff shall propound his written discovery request and move to amend the complaint by March 27, 1992.

Defendants shall file their dispositive motions regarding the plaintiff's claims under sections 1981, 1983 and 1985 by May 15, 1992. Defendants may include in their dispositive motion any other claims made by the complaint.

Baton Rouge, Louisiana, March 3, 1992.

"s/ Stephen C. Riedlinger "
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JUL 29 1994
CHARLES R.FULBRUGE III,
CLERK

No. 92-3804

LESLIE E. KNIGHTEN,
Plaintiff-Appellant,

versus

CAVE & MCKAY, Attorneys
at Law, ET AL.,
Defendants-Appellees

Appeal from the United States District Court For the Middle District of Louisiana

ORDER:

IT IS ORDERED that appellant's motions to strike appellees' brief and appendices and\or similar motion is Denied

"s/ Will Garwood"
WILL GARWOOD
UNITED STATES CIRCUIT JUDGE

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

FILED
JUL 8 1989 AM 11:17

NO. 340,380 DIVISION M

LESLIE E. KNIGHTEN,

versus

CAVE & MCKAY, ATTORNEYS AT LAW, ET AL., DONALD G. CAVE, JOHN F. McKAY, CRAIG S. WATSON, ET AL.,

MOTION AND ORDER FOR VOLUNTARY DISMISSAL

NOW INTO COURT, through undersigned counsel, comes plaintiff, Leslie E. Knighten, and defendants, Cave & McKay, Attorneys at Law, et al., Donald G. Cave, John F. McKay, Craig S. Watson, et al., and upon suggestion to the Court that the plaintiff desires at this time to voluntarily dismiss, without prejudice, all claims as to the name defendants in the above captioned matter.

Considering the Foregoing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that all claims, demands and cause of action of plaintiff against Cave & McKay, Attorneys at Law, et al., Donald G. Cave, John F. McKay, Craig S. Watson, et al., be and they are hereby dismissed, without prejudice, with each party to bear its own cost.

BATON ROUGE, Louisiana, "s\6th" day of "s\ July", 1989.

"s\Joseph F. Keogh"
JUDGE, 19TH JUDICIAL DISTRICT COURT

APPROVED BY:

"s\Leslie E. Knighten"
LESLIE E. KNIGHTEN
Rt. 3, Box 187
Quitman, MS 39355

"s\Craig S. Watson"
CRAIG S. WATSON
CAVE & McKAY
Baton Rouge, Louisiana 70806
504/924-3641

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. (As amended Apr. 28, 1993, eff. Aug. 1, 1983; Mar.2, 1987, eff. Aug. 1, 1987.) of the laws;"

SEVENTH AMENDMENT

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42 SECTION 1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

TITLE 42 SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(2) "; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the rights of any person, or class of persons, to the equal protection of the laws;"

RULE 11

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other

paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the